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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,786	07/03/2003	Frederick Thomas Pearson		7005

7590

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Kent R. Moore  
Kent R. Moore, P.C.  
10128 Rolling Wind Drive  
Soddy-Daisy, TN 37379

EXAMINER

CLEMENT, MICHELLE RENEE

ART UNIT PAPER NUMBER

3641

DATE MAILED: 06/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/613,786

Applicant(s)

PEARSON, FREDERICK THOMAS

Examiner

Michelle (Shelley) Clement

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3,4,6-10,12,13 and 19-21 is/are pending in the application.
- 4a) Of the above claim(s) 1,3,4,6-9 and 19-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10,12 and 13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of species b, claims 10, 12 and 13, in the reply filed on 3/29/05 is acknowledged. Claims 1, 3, 4, 6-9, and 19-21 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

### ***Response to Arguments***

2. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection as necessitated by applicant's amendments.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 10, 12 and 13 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for an additional tube section being disposed within the first tube section, does not reasonably provide enablement for the additional tube section having a diameter that is larger than the diameter of the distal end of the first tube section. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention commensurate in scope with these claims. It is not clear to the examiner how the additional tube section can be disposed within the first tube section while having a diameter that is larger than the diameter of the first tube section that it is supposed to be disposed within.

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5. Claim 12 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a second conductive lead electrically connected to the conductive probe, does not reasonably provide enablement for the conductive lead being placed along the exterior of the **first** tube section. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention commensurate in scope with these claims. Applicant has disclosed that the conductive leads are exposed metal that act as an “anti-grab” mechanism to deliver a shock to anyone who attempts to grab the device where the leads are located. Applicant also discloses the only embodiment wherein the power source is located in the first tube section is an embodiment without an additional handle; the switch is mounted on the first tube section and the first tube section effectively serves as a handle. It is not clear to the examiner how the user could use the first tube section as a handle if exposed metal electrically conductive leads were placed on the exterior of the portion that the user was supposed to hold.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 10 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bartel (US Patent # 2,981,465) and Abildgaard et al. (US Patent # 2,733,003). Bartel discloses an electrical stock prod (i.e. stun gun) having a first tube (reference 3) section having a base section (reference 4) and a distal end, and comprising a power source electrically connected to a voltage

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step-up circuit having an output of stepped-up voltage relative to the power source (Figure 4); at least one additional tube section (reference 2) having a proximal end and a distal end, the distal end comprising a conductive probe (reference 11) electrically connected to the output of the step-up circuit (Figure 4), the probe for delivering a high-voltage shock, the proximal end of the at least one additional tube section having head portion that has a diameter that is larger than the diameter of the distal end of the first tube section (Figure 1); a first conductive lead electrically connected to the probe, the first conductive lead attached to the outside of the head portion of the at least one additional tube section (Figure 3). The conductive probe is electrically connected to the output of the step-up circuit through the first conductive lead (Figure 4). Although Bartel does not expressly disclose the additional tube section being disposed within the first tube section and deployment means to extend the at least one additional tube section from its position as being disposed within the first tube section to an extended position, Abildgaard et al. does. Abildgaard et al. teaches a telescoping electric livestock prod comprising two tube sections (references 12 & 13) wherein the second tube section (reference 13) is disposed within the first tube section (reference 12) and deployment means to extend the second tube section from its position as being disposed within the first tube section to an extended position whereby, when in the extended position, the distal end of the first tube section can be secured in clamping engagement (i.e. frictionally connects) to the proximal end of the at least one additional tube section (column 2, lines 5-15). Bartel and Abildgaard et al. are analogous art because they are from the same field of endeavor: electric prods. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the telescoping sections as taught by Abildgaard et al. with the prod as taught by Bartel. The suggestion motivation to do so would

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have been to obtain a prod that could be carried conveniently and be used as either a long prod or as a short prod as suggestion by Abildgaard et al. at column 1, lines 15-20.

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Young (US # Des. 318,149).

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle (Shelley) Clement whose telephone number is 571.272.6884. The examiner can normally be reached on Monday thru Thursday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571.272.6873. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "M. D. Dement", is located in the lower right quadrant of the page.